

CITY ATTORNEY
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UNLIMITED JURISDICTION
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK and DOES 1 through
100, inclusive,

Defendants.

CASE NO. BC 422 252

[Assigned to John Shepard Wiley, Jr.,
Judge, Dept. 50]

SEPARATE STATEMENT OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS AND RESPONSES IN
DISPUTE

[FILED AND SERVED
CONCURRENTLY WITH MOTION
FOR DISCOVERY OF PEACE OFFICER
PERSONNEL AND TO COMPEL
FURTHER RESPONSES TO
INTERROGATORIES AND REQUEST
FOR PRODUCTION]

Date: April 22, 2010
Time: 8:30 a.m.
Dept.: 50

Action Filed: September 22, 2009
FSC: November 5, 2010
Trial: November 16, 2010

1
2 **TO THE COURT, ALL PARTIES, AND TO THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that Plaintiff William Taylor hereby provides the following
4 separate statement of requests for production and responses in dispute, and the reasons
5 why further responses should be compelled.

6
7 **REQUEST NO. 2:**

8 All DOCUMENTS which evidence, refer or relate to the demotion of plaintiff from
9 the rank of Deputy Chief to Captain.

10
11 **RESPONSE TO REQUEST NO. 2:**

12 City objects to this request as misleading and as assuming facts which cannot be
13 placed in evidence as there was no demotion to Captain, and no "rank" of Deputy Chief.
14 City further objects to this request to the extent it seeks information protected from
15 disclosure under Penal Code §832.7 and Evidence Code §1043. In addition, City objects
16 to this request to the extent this request seeks documents protected by attorney-client
17 privilege or attorney work-product doctrine. Notwithstanding, but subject to the foregoing
18 objections, City responds as follows:

19
20 City will produce the bulletin related to the decision to restructure the department
21 and eliminate the assignment of having a captain serve in the capacity of a deputy chief.
22 Documents gathered or generated during the investigation into alleged improprieties by
23 plaintiff related to the restructuring, which is ongoing and as such remains confidential and
24 privileged, will be provided when and if they are discoverable.
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1 **REASON WHY FURTHER RESPONSE SHOULD BE COMPELLED:**

2 It is clear from defendant's response that defendant relies upon "documents
3 gathered or generated during the investigation into alleged improprieties by plaintiff
4 related to the (alleged) restructuring" (i.e., the demotion of plaintiff from Deputy Chief to
5 Captain) plaintiff to support its general denials and numerous of its affirmative defenses in
6 this matter. Indeed, defendant claims that the "the most serious contributing factor" relied
7 upon by defendant in demoting plaintiff was the alleged improprieties of plaintiff which are
8 the subject of these alleged confidential investigations. Defendant cannot have its cake
9 and eat it too. Plaintiff is entitled to be apprised by defendant under oath of all facts,
10 witnesses, and documents that defendant claims allegedly support its contentions in this
11 matter so that plaintiff may rebut same and demonstrate that such alleged reasons are
12 false, pretextual, and a sham, and that the real reason for the demotion and other
13 adverse employment actions taken against plaintiff was retaliation by defendant for
14 plaintiff engaging in activities protected by *Labor Code* Section 1102.5 and FEHA.
15

16 The *McDonnell Douglas* burden-shifting framework applies in FEHA retaliation
17 cases as well as discrimination cases under both federal and state law. The same
18 framework also applies to retaliation actions premised on violations of *Labor Code* Section
19 1102.5. *Patten v. Grant Joint Union High School District* (2005) 134 Cal.App.4th 1378.
20 Under this framework, a plaintiff is required to establish a prima facie case, which consists
21 of showing that: a) plaintiff engaged in a protected activity; b) the employer subjected
22 plaintiff to an adverse employment action; and c) a causal link exists between the
23 protected activity and the employer's action. *Passantino v. Johnson & Johnson Consumer*
24 *Products, Inc.* (9th Cir. 2000) 212 F.3d 493, 506 (under Title VII); *Yanowitz v. L'Oreal*
25 *USA, Inc.* (2005) 36 Cal.4th 1028, 1044, 32 Cal.Rptr.3d 436, 446 (under FEHA).
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1 The causal link may be based solely on the timing of the relevant actions:
2 "Specifically, when adverse employment decisions are taken within a reasonable period of
3 time after complaints of discrimination have been made, retaliatory intent may be
4 inferred." *Passantino v. Johnson & Johnson Consumer Products, Inc.* (9th Cir. 2000) 212
5 F.3d 493, 507; *Mulhall v. Ashcroft, supra*, 287 F.3d at 551; *Mariani-Colon v. Department*
6 *of Homeland Security ex rel. Chertoff* (1st Cir. 2007) 511 F.3d 216, 224 - temporal
7 proximity (2 months) between protected activity and discharge sufficient for relatively light
8 burden of establishing prima facie case of retaliation.
9

10 Thus, the temporal relationship between engaging in the protected activity and a
11 subsequent adverse employment action is circumstantial evidence of retaliation. *Flait v.*
12 *North American Watch Company* (1992) 3 Cal.App.4th 467, 478 -479. A series of acts on
13 the part of a defendant employer which proceed in linear fashion from whistleblower
14 disclosures and culminating in adverse employment actions present a triable issue of
15 material fact as to a "causal link" between the protected activity and the adverse
16 employment action. *Patten v. Grant Joint Union High School District, supra*, 134
17 Cal.App.4th at 1390. Here, the temporal and linear connection is both direct and obvious.
18 Moreover, the relationship between plaintiff's whistleblowing activities and the adverse
19 employment actions is sufficient by itself to provide circumstantial evidence of retaliation
20 sufficient to establish a prima facie case. In *Colarossi v. Coty US Inc.* (2002) 97 Cal.
21 App. 4th 1142, the court noted that "suspicious" timing of the employer's actions may
22 provide the circumstantial link needed to infer that an improper purpose accounted for the
23 adverse action. (*Id.* at 1154.) "The timing of the decision may have been coincidental, but
24 when viewed as part of the mosaic of evidence" plaintiff presented, it will support the
25 causal element of an employment claim. As stated in *Passantino v. Johnson & Johnson*
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1 *Consumer Prods., Inc.* (9th Cir 2000) 212 F.3d 493, 507: "[T]his close timing provides
2 circumstantial evidence of retaliation that is sufficient to create a prima facie case of
3 retaliation." (noting that causation can be inferred from timing alone.); See also, e.g. *Miller*
4 *v. Fairchild Indus.* (9th Cir. 1989) 885 F. 2d 498, 505.

5
6 Once plaintiff has established a prima facie case, the employer must then articulate
7 a legitimate, nonretaliatory reason for each of the adverse employment actions taken. If
8 the defendant is able to do so, then the plaintiff must prove the employer's reason is a
9 pretext. *Stegall v. Citadel Broadcasting Co.* (9th Cir. 2003) 350 F.3d 1061, 1065; *Flait v.*
10 *North American Watch Corp.* (1992) 3 Cal.App.4th 467, 475-476. Here, plaintiff
11 engaged in the activities of whistleblowing and reporting and protesting discrimination in
12 the workplace, which activities are protected activities under *Labor Code* Section 1102.5
13 and FEHA. Within a short time of engaging in such protected activities plaintiff was
14 demoted from the rank of Deputy Chief to Captain, and has subsequently been placed on
15 administrative leave, based upon alleged reason that plaintiff had engaged in
16 improprieties, including that plaintiff had improperly interfered in and attempted to
17 influence an internal affairs investigation. Plaintiff contends that this alleged reason is
18 false and a sham, and is simply a pretext for retaliating against plaintiff based upon his
19 engaging in the protected activities enumerated above. It is well settled that evidence of
20 dishonest reasons for adverse employment actions proffered by the employer permits a
21 finding of prohibited motive, bias, or intent. *Reeves v. Sanderson Plumbing Products, Inc.*
22 (2000) 530 U.S. 133, 148- 149, 120 S. Ct. 2097, 2109; *St. Mary's Honor Center v. Hicks*
23 (1993) 509 U.S. 502, 511, 518, 113 S. Ct. at pp. 2749-2750, 2753.

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26 Pretext, like a prima facie showing of causation, may be inferred from the timing of
27 the company's termination decision, by the identity of the person making the decision, and
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1 by the terminated employee's job performance before termination. *Sada v. Robert F.*
2 *Kennedy Medical Center* (1997) 56 Cal.App.4th 138, 156 - 157; *Flait v. North American*
3 *Watch Co., supra*, 3 Cal.App.4th at 478 - 479; see also, *Miller v. Fairchild Industries, Inc.*,
4 885 F.2d 498, 505-06 (9th Cir. 1989). These factors support an inference that defendant's
5 stated reason for taking adverse employment actions against plaintiffs were merely a
6 subterfuge for its retaliatory conduct. See, *Sada v. Robert F. Kennedy Medical Center*,
7 *supra*, 56 Cal.App.4th at 156; *Flait v. North American Watch Co., supra*, 3 Cal.App.4th at
8 480 ("Viewing the evidence in the light most favorable to [the plaintiff], a reasonable trier
9 of fact could conclude that [the defendant's] articulated reasons for terminating [the
10 plaintiff's] employment are not worthy of credence"). As such, the information and
11 documents sought by this motion are directly relevant and discoverable in regard to the
12 defendant's alleged reason for the adverse employment actions taken against plaintiff,
13 and are directly relevant and discoverable in regard to plaintiff establishing that the
14 defendant's proffered reason is false and pretextual.
15

17 **II. THE INFORMATION AND DOCUMENTS REQUESTED ARE NOT PRIVILEGED**
18 **UNDER EVIDENCE CODE SECTION 1040, ET SEQ.**

19 Defendant vaguely claims that the "witness information and documents gathered or
20 generated during the investigation into alleged improprieties by plaintiff, which is ongoing
21 and as such remains confidential and privileged". However, during the meet and confer
22 process in regard to this motion, defendant cited only a single case, *County of Orange v.*
23 *Superior Court* (2000) 79 Cal.App.4th 759, in support of its position that the information
24 and documents sought are confidential. The *County of Orange* case is readily
25 distinguishable, and does not support defendant withholding the information and
26 documents sought under the facts of this case.
27

28 In the *County of Orange* case, the plaintiffs sought to obtain the files regarding an

1 on-going criminal homicide investigation regarding the murder of a two year old boy in
2 which the plaintiffs had been identified as two of the primary suspects. The court held as
3 follows:

4 **"We conclude on the record before us that the public interest in solving C. T.**
5 **Turner's homicide and bringing the perpetrator(s) to justice outweighed the**
6 **Wus' interest in obtaining the discovery sought, at least at the time this**
7 **matter was considered below.** We recognize the rather arbitrary nature of this
8 **conclusion, but the order we review was made less than a year after this civil action**
9 **was filed. (And it is still less than three years since it was filed.) When one reflects**
10 **that the lives of other children may be at risk with the killer(s) still at large,**
11 **the important interests in vindicating wronged plaintiffs and clearing dockets**
12 **do not seem quite so important.** Consequently, we find the superior court abused
13 its discretion in ordering production of the investigative file to the Wus' attorney.
14 And, parenthetically, we think that most reasonable parents in the Wus' position
15 would concur that the interest in apprehending a child's killer must continue to take
16 priority over any civil action of theirs. 79 Cal.App.4th 759, 767 - 768.

17 Here, there is no unsolved homicide of a child that is being investigated by the
18 defendant in which plaintiff is a suspect. Indeed, there is no criminal investigation of any
19 kind being conducted by the defendant in which plaintiff is a suspect. At best, defendant
20 claims to be investigating alleged violations of its own internal policies regarding the
21 conducting of internal affairs investigations. Defendant cannot possibly cite to any public
22 interest in maintaining the confidentiality of the information and documents at issue that
23 approaches in any way the magnitude of the public interest in apprehending the murderer
24 of a two year old boy. Indeed, exactly the opposite is true - the public interest in assuring
25 that law enforcement officials such a plaintiff, the former Deputy Chief of the defendant's
26 own police department, be free to report wrongdoing and discrimination by other members
27 of his police department without fear of retaliation, clearly outweighs any alleged
28 confidentiality interests of the defendant. Here, the public interest overwhelmingly
supports that plaintiff be provided with all of the information and documents necessary to
rebut defendant's specious and retaliatory claims of misconduct by plaintiff, and to protect
plaintiff's statutory rights to report the misconduct of defendant and its employees.

1 **III. PLAINTIFF AND HIS COUNSEL SHOULD BE PROVIDED THE INTERNAL**
2 **AFFAIRS STATEMENTS AND OTHER DOCUMENTS REGARDING THE**
3 **INCIDENTS AT ISSUE IN ORDER TO REBUT DEFENDANT'S ALLEGED**
4 **REASON FOR TAKING ADVERSE ACTIONS AGAINST PLAINTIFF, TO**
5 **PREPARE FOR DEPOSITIONS AND TRIAL, AND TO BE ABLE TO IMPEACH**
6 **THE TESTIMONY AND REFRESH THE RECOLLECTIONS OF WITNESSES, AS**
7 **HAS BEEN SPECIFICALLY FOUND PROPER IN THE HAGGERTY V.**
8 **SUPERIOR COURT CASE**

9 In *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1089, the court
10 specifically held that disclosure pursuant to the Pitchess procedure of internal affairs
11 investigation reports and other investigative materials regarding the incident at issue in the
12 civil case against a deputy sheriff, including internal affairs interviews, transcripts, and
13 other data, was proper. Here, similarly, the Court should order the production of all
14 relevant reports, investigative materials, interviews, transcripts, and other data regarding
15 the investigation and disposition of any complaints of misconduct allegedly involving
16 plaintiff.

17 Here, as in *Haggerty v. Superior Court, supra*, 17 Cal.App. 4th at 1089 - 1091, the
18 facts gleaned from the internal investigations at issue are directly relevant to the matters
19 at issue in the lawsuit. Moreover, as in *Haggerty*, the requested discovery is important,
20 not only for determining the events that occurred during the incidents, but also for
21 plaintiff's counsel to prepare effective cross-examination of defense witnesses, including
22 to impeach witnesses whose testimony at trial differs from statements made to the
23 investigating officers and/or to refresh the recollections of these witnesses. (See *People v.*
24 *Hustead* (1999) 74 Cal.App.4th 410, 417; see also, *People v. Memro, supra*, 38 Cal.3d at
25 677 ["one legitimate goal of [*Pitchess*] discovery is to obtain information 'for possible use
26 to impeach or cross-examine an adverse witness.]" See also, *Garden Grove Police*
27 *Department v. Superior Court, supra*, 89 Cal. App. 4th at 433.

28 Plaintiff is therefore entitled to the requested information not only to use as

1 substantive evidence to establish that defendant's alleged reasons for the adverse
2 employment actions at issue are pretextual, but also to use to impeach the testimony
3 and/or refresh the recollections of defense and other witnesses. As in *Haggerty*, the
4 investigations at issue concern the very incidents that are the subject of the civil claim.
5 Additionally, as in *Haggerty*, the privacy concerns of defendant and its employees are
6 diminished because they are the persons and/or entities whose conduct is at issue in the
7 litigation, and the requested internal investigation records concern their actions that are
8 alleged to be wrongful and will be fully litigated at trial.

10 Because of the direct relevance of the information, courts have recognized that the
11 law enforcement records of the investigations of the matters at issue in the case are
12 discoverable and have never imposed any special limitations on this disclosure if the
13 requested discovery otherwise meets the statutory criteria. (See *Robinson v. Superior*
14 *Court* (1978) 76 Cal.App.3d 968, 978 - "[a]ll statements made by percipient witnesses
15 and witnesses ... related to the incident in question ... are discoverable under the
16 standards set forth in *Pitchess*"; see also *People v. Alexander* (1983) 140 Cal.App.3d
17 647, 659, disapproved on another point in *People v. Swain* (1996) 12 Cal.4th 593.

19 Further, the *Haggerty* court also rejected the contention that the disclosure of
20 relevant internal affairs records would have a chilling effect on every law enforcement
21 agency's ability to conduct an uninhibited, thorough and candid analysis of a complaint,
22 finding such concerns speculative. The court noted that the question of whether police
23 investigation records are discoverable has been unequivocally answered in the
24 affirmative by the Legislature in enacting the *Pitchess* statutory scheme, and that the
25 *Pitchess* "legislation was intended to balance the need of criminal defendants [and civil
26 litigants] to relevant information and the legitimate concerns for confidentiality of police
27
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1 personnel records." *People v. Breaux* (1991) 1 Cal.4th 281, 312. The court held that in
2 balancing these interests, the Legislature made a decision that relevant evidence
3 contained in a personnel file, including internal investigation records and reports, should
4 be disclosed upon a proper showing of materiality and relevance, and did not provide any
5 blanket exceptions to the discoverability of such reports, particularly in the civil context.
6
7 *Haggerty v. Superior Court, supra*, 17 Cal.App. 4th at 1091 - 1092.

8 Here, a plausible foundation exists to conclude that plaintiff was subjected to
9 retaliation by defendant for engaging in activities protected by *Labor Code* Section 1102.5
10 and FEHA. The information and documents sought are directly relevant and material to
11 plaintiff's contentions that the reason given for the retaliatory actions by defendant are
12 false, a sham, and simply a pretext for retaliation. Indeed, defendant and its counsel have
13 conceded that such information and documents are relevant by repeatedly referencing
14 same throughout defendant's sworn discovery responses in this matter. As such, the
15 records pertaining to the investigations by defendant of the allegations made against
16 plaintiff are relevant and material. The information and documents sought should be
17 disclosed to plaintiff. In the alternative, such information and documents should be
18 examined by the court *in camera*, and all evidence relevant to plaintiff's claims should be
19 turned over to plaintiff's counsel.
20
21

22 **IV. THE INFORMATION AND DOCUMENTS REQUESTED ARE NOT PRIVILEGED**
23 **UNDER THE ATTORNEY-CLIENT PRIVILEGE OR THE ATTORNEY WORK**
24 **PRODUCT DOCTRINE**

25 An employer waives the attorney-client and attorney work product privileges
26 regarding the contents of an investigation by raising the fact of the investigation as a
27 defense. *Wellpoint Health Networks, Inc. v. Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th
28 110, 122-124, 128 - defendants waived attorney-client privilege regarding contents

1 investigation of plaintiff's sexual harassment claim by raising fact of investigation as
2 defense. (See also, *McGrath v. Nassau County Health Care Corp.* (ED NY 2001) 204
3 F.R.D. 240, 244. Where the employer relies on the investigator's report to show that it
4 conducted an adequate investigation of charges, that report will be subject to pretrial
5 discovery, even if the investigator was an attorney. *Wellpoint Health Networks, Inc. v.*
6 *Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th 110 - employer's pleading adequacy of its
7 investigation as defense waives attorney-client privilege and work product doctrine;
8 *Walker v. Contra Costa County* (ND CA 2005) 227 F.R.D. 529, 535 - pleading adequate
9 investigation of harassment complaint as affirmative defense waived attorney-client
10 privilege, self-evaluative privilege and attorney work product protection.
11

12 Further, a report that simply summarizes the investigation or presents factual
13 conclusions for management action, and does not contain confidential legal advice, is not
14 privileged from discovery even if it was prepared by an attorney. *Wellpoint Health*
15 *Networks, Inc. v. Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th 110, 121-122.
16

17 Here, the investigation at issue is being conducted by an investigator named
18 James Gardiner, and not by any attorney. Defendant is specifically relying upon the
19 information and documents generated by this investigation to support its denials and
20 alleged defenses in this matter. As such, even if the attorney-client and/or attorney work
21 product privileges applied to this investigation (which they do not), such privileges have
22 been waived by defendant.
23

24 **V. PLAINTIFF IS ENTITLED TO DISCLOSURE OF THE REQUESTED**
25 **DOCUMENTS**

26 **A. Peace Officer Personnel Records Are Expressly Discoverable Pursuant to**
27 **Evidence Code §1043(a) and 1045(a)**

28 *Evidence Code* §1043 and 1045(a) provide that if the personnel records and

1 information contained therein are relevant to the subject matter of the litigation, upon
2 motion by the party seeking the records and information there is a right of access to the
3 records of complaints, investigations of complaints, and discipline imposed as a result of
4 such investigations.

5 *Evidence Code* §1045(a) provides as follows:

6 **"(a) Nothing in this article shall be construed to affect the right of access to**
7 **records of complaints, or investigations of complaints, or discipline imposed**
8 **as a result of such investigations, concerning an event or transaction in**
9 **which the peace officer participated, or which he perceived, and the manner**
10 **in which he performed his duties, provided that such information is relevant**
11 **to the subject matter involved in the pending litigation. (Emphasis added)**

12 This subdivision is "expansive." *Fletcher v. Superior Court* (2002) 100 Cal.App.4th
13 386, 399. In particular, "relevant information" under *Evidence Code* Section 1045 is not
14 limited to facts that may be admissible at trial, but may include facts that could lead to the
15 discovery of admissible evidence. *People v. Memro, supra*, 38 Cal.3d at 681-682; *People*
16 *v. Hustead, supra*, 74 Cal.App.4th at 423.

17 Under the statutory scheme, a party seeking discovery of a peace officer's
18 personnel records need only file a written motion describing the type of records sought,
19 supported by "[a]ffidavits showing good cause for the discovery... , setting forth the
20 materiality thereof to the subject matter involved in the pending litigation and stating upon
21 reasonable belief that the governmental agency identified has the records or information
22 from the records." (*Evidence Code* § 1043 (b)(3).) This initial burden is a "relatively
23 relaxed standard." *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 84.
24 Information is material as defined by *Evidence Code* § 1043 (b)(3) if it 'will facilitate the
25 ascertainment of the facts and a fair trial.' "[A] declaration by counsel on information and
26 belief is sufficient to state facts to satisfy the 'materiality' component of that section." *Abatti*
27 *v. Superior Court, supra*, 112 Cal.App.4th at 51.
28

1 In *Santa Cruz v. Municipal Court*, *supra*, 49 Cal.3d 88 - 89, the California Supreme
2 Court held that personal knowledge is not required by *Evidence Code* 1043(b) and that an
3 affidavit on information and belief is sufficient. The Court found that in the context of
4 Pitchess motions, the Legislature had expressly considered and rejected a requirement of
5 personal knowledge. The Court held that the legislative history, the case law background,
6 and the statutory language all point to the same conclusion: the "materiality" component
7 of *Evidence Code* § 1043(b) may be satisfied by affidavits based on information and
8 belief. (49 Cal.3d at 89.)

10 In *Abatti v. Superior Court*, *supra*, 112 Cal.App.4th 39, the *Pitchess* motion
11 contained an affidavit of counsel that related statements from other officers that the former
12 officer had been asked to leave, and had been the subject of other complaints, and was
13 labeled a "liability" problem for the department. *Id.* at 46-47. The court considered
14 counsel's affidavit sufficient, even though it merely averred the contents of the counseling
15 memos rather than stating with specificity the evidence which was contained therein. The
16 court reasoned that to require such "specificity" in the *Pitchess* process would place the
17 proponent of the motion in a "Catch-22" position of having to allege with particularity the
18 very information he or she is seeking. *Id.* at 47, fn. 7.

20 **VI. THE INFORMATION AND DOCUMENTS SOUGHT ARE RELEVANT AND**
21 **DISCOVERABLE, AND RELATE DIRECTLY TO DISPUTED ISSUES IN THIS**
22 **CASE**

23 Relevance is defined by *Evidence Code* Section 210, which provides that:

24 "Relevant evidence" means evidence, including evidence relevant to the credibility
25 of a witness or hearsay declarant, having any tendency in reason to prove or
26 disprove any disputed fact that is of consequence to the determination of the
27 action."

28 Relevance to the subject matter is to be broadly construed and is not limited to
relevance to the narrow issues of the case. *Greyhound Corporation v. Superior Court*

1 (1961) 56 Cal.2d 355, 378, 390. As set forth above, in the *Pitchess* motion context, a
2 declaration by counsel on information and belief is sufficient to state facts to satisfy the
3 'materiality' component of *Evidence Code* § 1043(a). *Abatti v. Superior Court* (2003) 112
4 Cal.App.4th 39, 51; *Haggerty v. Superior Court, supra*, 17 Cal.App. 4th at 1086.

5 Here, there is a reasonable basis to conclude the internal investigation files at issue
6 contain information that are relevant and material to the lawsuit. (See *Robinson v.*
7 *Superior Court, supra*, 76 Cal.App.3d at 977 [noting that the relevancy of an investigation
8 of the incident that is the basis for the lawsuit is "self-evident"]. Indeed, the records
9 requested involve the investigations of the very matters which are the basis of defendant's
10 alleged defenses in this matter, and are therefore directly relevant to the allegations in this
11 case. Further, such documents, including the statements taken of witnesses during the
12 internal investigations by defendant, are evidence relevant to the credibility of the
13 witnesses.
14

15
16 It is unfair, unjust, and inequitable for defendant and its counsel to have access to
17 this information and materials, to rely upon same in denying plaintiff's allegations, and to
18 utilize same to prepare for deposition and trial, and to deny plaintiff's counsel access to
19 the same information and documents. *Evidence Code* Sections 1043 and 1045 are not
20 intended to provide public entities and law enforcement agencies with an unfair advantage
21 in defending civil actions. A public entity cannot invoke these code sections to withhold
22 evidence relevant to the case. *Garden Grove Police Dept. v. Superior Court* (2001) 89
23 Cal.App.4th 430, 433, c.f. *People v. Memro* (1985) 38 Cal.3d 658, 679. As the court
24 stated in *Gill v. Manuel* (9th Cir. 1973) 488 F.2d 799, 803, *Evidence Code* §1040 is not
25 "intended to provide a shield behind which law enforcement personnel may seek refuge
26 for possible wrongdoings."
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1 **VII. Plaintiff Has Demonstrated Good Cause For The Production of the Requested**
2 **Information and Documents**

3 The declaration submitted herewith contains facts that establish a plausible
4 foundation to conclude that defendant engaged in retaliation against plaintiff. The conduct
5 by plaintiff which defendant contends supports its retaliatory actions against plaintiff was
6 the subject of one or more internal affairs investigations by the defendant. Plaintiff
7 contends that the allegations by defendant of misconduct by plaintiff are unfounded, and
8 the information and documents regarding defendant's investigation of such alleged
9 misconduct will demonstrate that the allegations are specious. As such, the facts
10 regarding these matters, which are of consequence to the determination of this action, are
11 disputed between the parties, and the requested information, documents, and items are
12 relevant and discoverable in regard to such disputed issues.
13

14
15 Dated: 3/4/10

16
17 By: 

18 GREGORY W. SMITH
19 CHRISTOPHER BRIZZOLARA
20 Attorneys for Plaintiff
21 WILLIAM TAYLOR
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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 6300 Canoga Avenue, Suite 1590, Woodland Hills, California 91367.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Woodland Hills, addressed as follows:

DATE OF SERVICE : March 5, 2010

DOCUMENT SERVED : **SEPARATE STATEMENT OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND RESPONSES IN DISPUTE**

PARTIES SERVED : **SEE ATTACHED SERVICE LIST.**

XXX (BY REGULAR MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Woodland Hills, California. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Woodland Hills, California on March 5, 2010.

Selma I. Francia

3-5-10

SERVICE LIST

**WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252**

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Burbank Police Department
200 N. Third Street
Burbank, California 91502